IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 99 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIRSINH DALCHAND NIM

Versus

VINODCHANDRA A VYAS

Appearance:

MR SURESH M SHAH for Petitioner

Mr.VIREN DAVE for MR YOGESH S LAKHANI for Respondent No.1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/01/2001

ORAL JUDGEMENT

1. This is tenant's Revision under Section 29(2) of the Bombay Rent Act against concurrent judgments and decrees of the trial Court as well as Lower Appellate Court.

2. The facts giving rise to this revision are shortly as under :L

The plaintiff respondent filed Suit for eviction of the defendant revisionist only on the ground that the revisionist failed to pay arrears of rent exceeding six months for the period between 1.6.1978 to 31.12.1978 within a month of service of notice of demand.

3. The tenant revisionist contested the Suit on the ground that the landlord's claim of monthly rent of Rs.50/- is incorrect whereas Rs.50/- per month includes rent and electric charges. It is alleged that the plaintiff did not pay the electric bills in order to harass the defendant and as such the plaintiff is liable for payment of electricity charges. It is further alleged that due to default of the plaintiff in payment of electric charges the electric connection was disconnected by the Gujarat Electricity Board and therefore the defendant stopped paying the rent. It was accordingly pleaded that the plaintiff is not entitled to decree for possession.

4. The trial Court found that Rs.50/- p.m. included electricity charges as well as rent. It further found that statutory liability of the tenant is to pay half of the education cess and as such the case did not fall u/s.12(3)(a) rather it fell u/s.12(3)(b), but since the tenant did not pay the entire arrears of rent on the first date of hearing of the Suit and also failed to pay the same during pendency of the Suit hence he was not entitled to protection of Section 12(3)(b) of the Rent Act. The trial Court further found that the standard rent was Rs.50/- inclusive of electricity charges. With these findings the Suit was decreed.

5. The tenant preferred Appeal againstthe Judgment and Decree of the trial Court which was dismissed. The Appellate Court found that the case is covered by Section 12(3)(a) of the Rent Act and hence it was not necessary to consider Section 12(3)(b) of the Act. The Lower Appellate Court agreed with the trial Court that the landlord was entitled to decree for eviction hence it dismissed the Appeal of the tenant revisionist. It is therefore this revision.

6. Shri M.S.Shah for the revisionist and Shri Viren Dave on behalf of Shri Y.S.Lakhani for the respondent have been heard and the Judgments of the two Courts below have been examined.

7. Shri Dave has argued that it is a case of concurrent findings recorded by the two Courts below hence the revisional Court should be reluctant in interfering with such concurrent judgments and decrees of the two Courts below. Shri Shah however pointed out that the Judgments of the two Courts below are apparently contrary to law hence the revisional court can examine whether the judgments are in accordance with law or not.

8. Keeping in view of the submission of Shri Shah I propose to examine the points on which Shri Shah has challenged the Judgment of the lower Appellate Court.

9. Shri Shah argued in the first instance that the notice of demand is vague and invalid and if the notice of demand is found to be invalid then no decree for eviction could be passed by the two courts below. In order to elaborate his contention Shri Shah contended that in the notice the landlord demanded monthly rent of Rs.50/- p.m. There was no mention in the notice whether this amount included electricity charges or electricity charges were exclusive of Rs.50/- p.m. He has further coantended that the trial Court framed an issue on the point and concluded that Rs.50/- p.m. included the rent as well as electricity charges hence it cannot be said that the tenant was in arrears of rent for more than six months when the notice of demand was served. The landlord claimed arrears of rent from 1.6.1978 to 31.12.1978. Notice of demand was issued on 22.1.1979 which was served on the revisionist on 23.1.1979 vide Ex.59 and 60. In view of the finding of the trial Court that Rs.50/- included electricity charges Shri Shah contended that it cannot be said that arrears of rent at the rate of Rs.50/- p.m. exceeded six months on the date of service of notice and in this view of the matter he further contended that notice has become invalid hence the Suit for eviction was wrongly decreed by the two Courts below. It seems difficult for me to accept this contention. It is true that the trial Court has given finding that Rs.50/- p.m. includes electricity charges, but this finding is as vague as anything. No landlord would agree for such amount, namely, the tenant may consume any number of units of electricity, may be exceeding Rs.50/- p.m. and even then it can be said that the agreed rate of rent was Rs.50/- inclusive of electricity charges. Electricity charges have not been quantified by the tenant. Consequently agreement suggested by the defendant and upheld by the trial Court on the face of it revolts to conscience. Whatever may be the finding of the trial Court proceeding on such vague

finding it cannot be said, in the absence of quantification of electricity charges, that the arrears of rent did not exceed for a period of six months on the date of service of notice of demand.

10. Shri Shah further contended that it is admitted case of the parties that electric connection was disconnected in September, 1978 whereas the period of arrears claimed by the landlord is from 1.6.1978 to 31.12.1978 and since during this period no electricity was supplied to the tenant revisionist from September, 1978 to December, 1978 it cannot be said that the arrears of rent exceeded six months. This contention also cannot be accepted, in the absence of quantification of electricity charges. On the basis of such vague findings it is difficult to up-hold the contention that the arrears of rent did not exceed six months. Consequently it cannot be said that the notice of demand is invalid or that the arrears of rent did not exceed six months on the date of service of notice.

11. The next contention of Shri Shah has been that looking to the averments in the plaint it is clear that the plaintiff claimed cause of action for eviction on the ground covered u/s.12(3)(a) and in view of the findings of the trial Court that Section 12(3)(a) is not applicable the landlord cannot be permitted to fall back upon Section 12(3)(b) of the Act. The contention is acceptable to the extent that once the landlord claimed eviction u/s.12(3)(a) then he cannot be permitted during the pendency of the Suit to fall back on the alternative provision contained in Section 12(3)(b) of the Act. The question, therefore, is whether Section 12(3)(a) is applicable or not because the landlord has specifically filed the Suit u/s.12(3)(a) of the Rent Act. The Lower Appellate Court has held that Section 12(3)(a) is applicable on the facts of the case hence there is no necessity to examine whether the tenant is entitled to protection of Section 12(3)(b) of the Act. Shri Shah has contended that the Lower Appellate Court has not at all considered whether Section 12(3)(b) applies to the facts of the case or not. However, it has to be seen whether Section 12(3)(a) applies in the instant case and if it is found so in affirmative in that event the decree for eviction cannot be said to be unjustified and the two courts below were not obliged to examine whether Section 12(3)(b) is applicable or not and whether the tenant is entitled to protection u/s.12(3)(b) or not. As pointed out earlier it is now clear that more than six months rent was due from the tenant revisionist. Service of notice of demand on 23.1.1979 is established from Ex.59.

Tenant's denial that he did not receive notice of demand in these circumstances cannot be accepted. It is undisputed that within a month of service of notice of demand no rent was remitted or paid to the landlord by the defendant - revisionist. It is also flowing from the material on record that no dispute of a standard rent was raised within the statutory period. The dispute of standard rent can be raised in number of ways. The tenant can raise such dispute even before service of notice of demand. Likewise he can raise this dispute within a month of service of notice of demand. Thirdly he can raise such dispute by moving an application for fixation of standard rent u/s.11 of the Act. Raising a dispute in written statement is no raising of dispute regarding standard rent because in no case written statement can be filed within a month of service of notice. The landlord has to wait for a period of one month after service of notice of demand and then only suit for eviction can be filed. However, in this case when the written statement was filed no dispute of standard rent was raised by the tenant. Subsequently after a long gap the defendant sought amendment in his written statement and then he raised the dispute of standard rent. The notice of demand was served on 23.1.1979. The suit for eviction was filed on 2.4.1979. The written statement was filed on 30.6.1979. Amendment in the written statement was allowed on 8.9.1983 and if in the amended written statement dispute of standard rent was raised for the first time in September, 1983 it cannot be said that the dispute of standard rent was raised within a month of service of notice. Consequently there was no subsisting of dispute of standard rent nor raising of such dispute can be said to be bonafide dispute.

12. Shri Shah has contended that since the issue was framed regarding dispute of standard rent which was decided by the trial Court in the Judgment the decree for eviction could not be passed unless the tenant was given opportunity to deposit the standard rent and it is only on failure of the tenant to deposit standard rent within the time granted by the trial Court that the decree for eviction could be passed. He further argued that some of the orders passed by the trial Court during pendency of the suit directing the revisionist to deposit the rent at the rate of Rs.50/- p.m. cannot be said to be an order for depositing the interim standard rent and in any event interim standard rent cannot be equated with standard rent and since the standard rent was not decided by the trial Court earlier the tenant cannot be evicted. In my opinion this argument also cannot be accepted because it

has already been held above that there was no subsisting bonafide dispute of standard rent. If the plea was raised by the defendant disputing standard rent after 3-1/2 years naturally the trial Court was bound to frame issue on such dispute and decide the same. If such dispute was decided by the trial Court it cannot be said that it was a decision on a real dispute of standard rent and as such the trial Court was not obliged to grant any time to the defendant to make up deficiency by depositing the standard rent in the Court.

13. Another contention of Shri Shah has been that the trial Court has found that it was tenant's liability to pay 50 % of the education cess and since 50 % education cess was to be paid by the tenant the tenancy cannot be said to be monthly tenancy. However, it is found from the notice that the landlord did not claim that the tenant was under any agreement bound to pay education cess. Whatever has been stated by the landlord is that because the tenant did not pay education cess it was paid by him. This statement, however, does not mean that there was agreement between the parties that the tenant shall pay whole or half of education cess. For non-payment of education cess by the tenant under these circumstances, in the absence of any specific agreement, it can hardly be said that the tenancy lost the character of monthly tenancy.

14. Shri Shah has also pointed out the statement of the landlord in assessment proceeding and on the basis of that he contended that the rent could not be Rs.50/excluding the electricity charges. However, the statement of living person before another court or quasi-judicial authority cannot be treated as substantive evidence unless the person who gave the same and is found to be living was examined and such statement was confronted to him u/s.145 of the Evidence Act. The possibility that that statement was made by the landlord only for evading the tax liability cannot be ruled out.

15. In view of the aforesaid discussion it is clear that it was a case of monthly tenancy. It is further established that more than six months rent was due from the revisionist which he failed to pay within a month of service of notice of demand. It is further established that there was no dispute of standard rent. Consequently the case fall within the ambit of Section 12(3)(a). If this is so then the two courts below had no option but to decree the Suit. If the trial Court examined the matter from another angle it cannot be said that the judgment of the lower Appellate Court is rendered illegal. However,

since the case was covered u/s.12(3)(a) of the Rent Act the two Courts below were not obliged to examine whether the tenant is entitled to protection of Section 12(3)(b) of the Rent Act. The Judgments and Decrees of the two Courts below are therefore in accordance with law. No interference in revision on the facts and circumstances of the case is required.

16. The revision is, therefore, dismissed. No order as to costs.

sd/-

Date : January 19, 2001 (D. C. Srivastava, J.)

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